



# NATIONAL ASSOCIATION OF THE DEAF

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February 25, 1998

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FEB 24 1998

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: In the Matter of Closed Captioning and Video  
Description of Video Programming, Implementation of  
Section 305 of the Telecommunications Act of 1996, Video  
Programming Accessibility Further Notice of Proposed  
Rulemaking, MM Dkt. No. 95-176

Dear Ms. Salas:

Enclosed please find an original and eleven copies of the Reply of the National Association of the Deaf in the above captioned docket.

I would appreciate your referring all correspondence regarding this matter to my attention.

Sincerely,

Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy

Enclosures

**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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	)	MM Docket No. 95 -176
Implementation of Section 305 of the	)	
Telecommunications Act of 1996	)	
	)	
Video Programming Accessibility	)	

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF THE DEAF  
TO FURTHER NOTICE OF PROPOSED RULEMAKING**

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**COMMENTS OF  
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**I. Introduction**

The National Association of the Deaf ("NAD") hereby submits these comments to the Federal Communication Commission's ("FCC's" or "Commission's") Further Notice of Proposed Rulemaking (FNPRM) in the above captioned proceeding on access to televised emergency information by individuals who are deaf and hard of hearing. The NAD is the nation's largest organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. The NAD is a private, non-profit federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and direct members. The NAD seeks to assure a comprehensive,

coordinated system of services that is accessible to Americans who are deaf and hard of hearing, enabling them to achieve their maximum potential through increased independence, productivity, and integration.

The NAD has been an active participant in this FCC docket, having submitted extensive comments and reply comments in response to both the FCC's Notice of Inquiry (NOI) and Notice of Proposed Rule Making, and having submitted a Request for Reconsideration of portions of the Commission's final Report and Order in this proceeding.<sup>1</sup> As the Commission notes in its FNPRM, its Closed Captioning Order did not contain specific rules for access to televised emergency information. See FNPRM at ¶4. In that Order, however, the FCC acknowledged the importance of "providing all viewers with accurate information regarding fast breaking news," and noted that "viewers with hearing disabilities may not always have access to the same [emergency] information that is currently available to other viewers." Closed Captioning Order at ¶252. Also in that Order, the FCC promised to initiate a proceeding designed to ensure that individuals who are deaf and hard of hearing have full access to televised information about emergencies. The NAD applauds the Commission for now fulfilling its commitment to initiate a proceeding on this issue. Concerns about access to emergency information remain at the forefront of concerns about access by deaf and hard of hearing individuals nationwide. Endless complaints from consumers who have not had such access have poured into the NAD, as well as to other organizations over

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<sup>1</sup> In the Matter of Closed Captioning and Video Description of Video Programming, MM Docket No. 95-176, *Report and Order*, FCC 97-279, codified at 47 C.F.R. §79.1 *et. seq.* (Closed Captioning Order).

the past several decades. The failure to provide access to emergency information has had serious and irreversible consequences for these individuals. We are hopeful that a new FCC rule on this issue will finally bring to an end the disparity that now exists in accessing this information.

## II. Emergency Programming Should have the Highest Priority Under the Captioning Mandates

Under the Commission's Closed Captioning Order, emergency programming is subject to the same transition schedule as is all other new programming. As such, networks have considerable discretion with respect to when they will caption emergency programming, and may, under the terms of the Order, wait as long as eight years to caption the emergency information they televise.<sup>2</sup> In its FNPRM, the Commission asks whether the captioning of emergency programming should be given priority over captioning of other types of new programming during the transition schedule. FNPRM ¶12. The NAD strongly urges the FCC to make televised emergency captioning the highest priority in the captioning schedule, and to require that such captioning be provided nationwide no later than November 1, 1998. Moreover, given the critical need for providing access to emergency information, we urge that this requirement apply to all video program providers, regardless of whether such providers have already met applicable captioning benchmarks for new programming. Similarly, the NAD also opposes any exemption for video program providers based on the gross revenues of those providers. See FNPRM ¶13.

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<sup>2</sup> Of course, stations are under an obligation to provide visual information for emergency programming that comes under the Emergency Alert System. However, as the FCC points out, use of the EAS is only required for national emergencies, and local stations have latitude in determining whether to use EAS for local emergencies. As a consequence, often times information about local emergencies is simply not captioned at all. In addition, as currently written, the requirement to provide EAS in both video and audio does not apply to cable stations serving fewer than 5000 subscribers. We urge that the rules issued in the instant proceeding not contain any such limitation. So long as a station provides televised emergency information, it

As shown below, the vast majority of local news stations will be able to bear the costs associated with providing emergency captions. Stations that do not believe they are able to bear the costs of such captioning should be required to file an exemption request with the Commission, and if granted, should nevertheless be required to provide open captioned emergency crawls providing essential information about the local emergency.

### III. Captioning of Televised Emergency Information Should be in Real Time

The FCC has tentatively concluded that “any textual presentation of emergency information programs should be required to incorporate substantially the entire text of the audio portion of the program.” FNPRM ¶12. We agree with this conclusion, and note that the only true means of capturing the entire text of a program’s audio portion is through real time captioning. FNPRM ¶¶9, 10.<sup>3</sup> Such verbatim captioning may be provided in either open or closed format.

Much of the FCC’s FNPRM is devoted to questions about the feasibility and economic burdens of using real time captioning. In fact, the fees associated with real time captioning are quite reasonable, and unlikely to impose significant burdens on local stations. Real time captioning can cost as little as \$120 per hour and, more rarely, up to \$800 per hour, depending on

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should be required to make that information accessible to its deaf and hard of hearing viewers in a visual format.

<sup>3</sup> The Commission asks whether its rule covering broadcast licensees, allowing those licensees to “use any method of visual presentation which results in a legible message conveying the essential emergency information, including slides, electronic captioning, manual methods, or mechanical printing processes” should be extended to multichannel video program distributors and cable television operators. As does its Closed Captioning Order, the FCC’s final rule on emergency captioning should cover cable, broadcast, satellite and all other means of transmitting television programs. However, the standard for such transmissions should be inclusion of the entire text of the audio portion of a program, rather than just the “essentials” of the emergency information. All

the captioning agency used, and the physical location of the captioner. Fees are higher where captioners must report to a central office to actually perform the captioning functions. In contrast, at least one national captioning agency charges minimal fees by employing real time captioning stenographers from their homes. That agency reports that it utilizes over forty captioners from across each of the nation's time zones, and that its large pool of captioners have prevented it from ever having to turn down a request for emergency captioning. Indeed, that agency further reports that it frequently receives calls from highly qualified stenographers seeking captioning work which is not yet available. Because the supply of such stenographers exceeds the present demand, the agency even maintains a waiting list for surplus captioners.

Through the use of cellular telephones, pagers, call forwarding, and other technologies, home-based captioners have been readily available to caption local news emergencies on an "on call" basis from locations that are remote from the location of the actual emergency. In this fashion, at fees of only a little over \$100 per hour, they have been able to provide captions for a number of local stations nationwide. For example, when heavy rains covered many of the California regions in recent months, live remote captioning was used successfully throughout those regions, and at various times covered four stations in Los Angeles, two stations in San Francisco, and two stations in Sacramento. The successful experience of agencies that have used such live remote captioning in this fashion demonstrates the feasibility of requiring real time captioning nationwide, even when an emergency affects a large geographic region. See FNPRM ¶11.

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too often details about an emergency which are omitted from a news summary provide critical information needed to ensure the health and safety of viewers affected by an emergency.



It is difficult to determine, at this time, the exact number of individuals in the United States who are qualified to perform real time captioning. One reason for this difficulty is that not every real time captioner is a member of the National Court Reporters Association. However, the experience of captioning agencies that use real time captioners indicates that the number of real time captioners is on the rise. Additionally, the fact that supply already exceeds demand for at least one agency suggests that once a rule requiring real time captioning is actually in place, the number of real time captioners available to meet that demand will rapidly and steadily increase.

The FCC asks whether there are other methods of visually presenting emergency information on television. FNPRM ¶16. One promising technology is voice recognition. The February 23, 1998 edition of Business Week reports that new computer programs are able to recognize speech "with more than 95% accuracy." While, in the past, speech recognition was only useful with limited vocabularies and prior speaker training, newer programs are not so limited, and offer hopes of being able to decipher even the most difficult accent. Business Week reports that some of these programs "have won raves from reviewers," and that the cost of such programs continue to drop dramatically. With such technology, it may be possible, in the future, for stations to simply assign a qualified employee to read emergency information, while that information is simultaneously transmitted in captions through a speech recognition program. We urge the FCC to further explore this technology, but at the same time caution that this technology should not be used in place of real time captioning until it is proven to be a truly effective and accurate means of conveying emergency information. Stated otherwise, this technology should be employed only when the FCC can be assured that its error rate will be so low as to not impede the full and accurate provision of emergency information to deaf and hard of hearing viewers.

#### IV. “Emergency Information” Should be Defined Broadly

The FCC seeks comment on the types of information that should be considered “emergency information” for purposes of its new captioning rules. FNPRM ¶18. We agree with the Commission that its final rule “should broadly define emergency information to ensure that sufficient information regarding situations that affect the safety of viewers is available to persons with hearing disabilities with the same immediacy as it is for other viewers.” *Id.* Among other things, the definition should include any information that has an immediate bearing on the lives, health or safety of individuals within a community. For this reason, we agree as well that the final rule should cover all of the situations now enumerated in the rule covering broadcast licensees: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from emergencies. *Id.*, citing 47 C.F.R. §73.1250(a). We propose that the following be added to the above list: escaped convicts and man-hunts, widespread or critical service strikes, water contamination, public health crises (e.g., fish/fruit contamination, quarantines), air pollution warnings, mudslides, volcanic eruptions, avalanches, chemical and nuclear spillage or accidents, burst water mains, electric blackouts, collapsed bridges/roads/dams, bomb threats or explosions, terrorist acts, and warnings or watches of weather changes (e.g., heavy thunderstorms) that may have an impact on the safety of viewers.

Equally important to providing information about the existence of an emergency, however, is providing information to viewers about ways to protect their health, safety, and well-being in the event of an emergency. All too often, stations will provide an emergency crawl alerting

viewers as to the existence of an emergency, and then provide no textual information whatsoever on the safest means of responding to that emergency. Deaf and hard of hearing viewers should receive full, not partial access with respect to televised information about emergencies. In order to achieve full access, it will be necessary to provide real time captioning for programming information on the availability of food, clothing, shelter, medical care, transportation, and other services that might be provided when an emergency strikes. Similarly, warning and follow-up information, such as closures (school, government, etc.), evacuations, earthquake aftershocks, unsafe areas (e.g., during toxic gas releases or civil disorders), route closures and detours, emergency transit routes, and curfews, must be accessible through captions to individuals who are deaf and hard of hearing.

#### V. FCC Rules Should Prohibit Blocking of Emergency Information or Open Crawls

In its Notice of Proposed Rulemaking on closed captioning, the FCC acknowledged that captions “should not interfere with the viewability of the video portion of the program.” Notwithstanding this statement, there is nothing in the Closed Captioning Order to prevent networks from blocking open character generated announcements with captions or from having those captions blocked by such open “crawls.” An ongoing problem for caption viewers, the conflict between captions and crawls frequently prevents viewers from having access to pertinent information, such as the names of speakers, or the times and places of scenes in a television program. With respect to emergencies, the blocking of either captions or open crawls becomes more than just an inconvenience; it becomes a danger. Critical information, such as notification as to the very existence of an emergency situation, weather advisories, and school closings, is almost always provided in text at the bottom of the television screen. When captions block this

information, the health and safety of the viewers watching those programs is directly affected.

Moreover, one captioning agency has reported to the NAD that, although it had been requested to provide remote emergency captioning for one local station, it was unable to do so, because its captioning interfered with the open character generated announcements of that station.

At least one local Washington D.C. station, WRC-TV, has found a solution to the above problem. Through a system called "Television Online Bi-Screen" or "TOBI," the station accesses line 21 of the vertical blanking interval to run emergency information at the top of the screen, so that it does not conflict with the captions appearing at the bottom of the screen. WRC-TV reports that "TOBI is a simple but effective way to convey emergency information without interfering with . . . closed captioning," and has stated its willingness to share this system with other interested broadcasting and cable stations. As we have done in prior comments in the FCC's captioning proceeding, we again urge the FCC to promulgate a rule that would prohibit the blocking of open character generated announcements by closed captions or the blocking of captions by such announcements.

In the Closed Captioning Order, the FCC stated that it would require video programming distributors to monitor and maintain equipment and signal transmissions to ensure that captioning reaches consumers. Closed Captioning Order ¶212. For the reasons noted above, this is especially critical for captioning provided on emergency programming, especially where captions would otherwise be lost because the picture has been "squeezed" by the station. Toward this end, we ask the FCC to again emphasize the need for such monitoring with respect to emergency televised programming.

## VI. Conclusion

In the past year, several of the Commission's proceedings have emphasized the need to ensure that individuals who are deaf and hard of hearing receive full access to emergency information and services. For example, in its proceeding on enhanced 911 wireless services, the FCC raised serious concerns about delays in achieving TTY compatibility for digital handsets, because such delays would "diminish [the safety of TTY users] in emergencies, as well as the safety of others for whom they might seek help."<sup>4</sup> Similarly, emphasizing the need to ensure that emergency messages are accessible to individuals who are deaf and hard of hearing, the FCC revised the final rules in its proceeding on emergency alert system (EAS) messages, to require that such messages be provided in both audio and video formats on nearly all cable programmed channels.<sup>5</sup> The very same concerns raised in these proceedings, about the safety, health, and welfare of deaf and hard of hearing individuals, are at issue here. We urge the FCC to continue its efforts to ensure full access to emergency information by deaf and hard of hearing individuals by

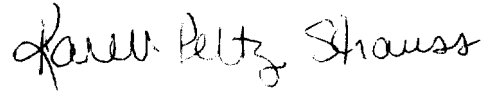
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<sup>4</sup> *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Memorandum Opinion and Order*, FCC 97-402, CC Dkt. No. 94-102 at ¶53 (released December 23, 1997).

<sup>5</sup> *In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FCC 97-338, FO Dkt. No. 91-301, FO Dkt. No. 91-171 at ¶22 (released September 29, 1997).

taking swift action that will require the real time transmission of this information.

Respectfully submitted,

A handwritten signature in cursive script that reads "Karen Peltz Strauss".

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